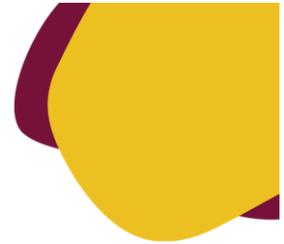


Rights Resource Network SA

connecting change creators + law makers

rightsnetworksa.com
rightsnetworksa@gmail.com



Select Committee on COVID-19
Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Via email covid.sen@aph.gov.au

22 February 2022

Dear Committee Secretary

COVID-19 RESPONSE & RIGHTS OF BRIDGING VISA HOLDERS

We write as members of the [Rights Resource Network SA](https://www.rightsnetworksa.com/). Thank you for the opportunity to provide feedback on Australia's management of the COVID-19 pandemic and the impact it is having on the lives and rights of members of our community.

The [Rights Resource Network SA](https://www.rightsnetworksa.com/) is a volunteer-run collaboration that shares information and research among academics, community organisations and individuals who share an interest in protecting the human rights of South Australians.¹ Our Network includes a range of experts who are also interested in South Australia's response to COVID-19 and who would be very pleased to meet with the Committee and/or provide further written submissions in the future. This submission represents the authors' own views, based on the Network's past advocacy and research in this area.

COVID-19 has impacted everyone within Australian society, but the impacts of the pandemic and the Government's response to the pandemic have been disproportionately severe for certain vulnerable groups, including people on bridging visas.

Bridging visas are a class of temporary visas under s 37 of the *Migration Act 1958* (Cth). They are granted to people who meet a set of criteria, including people applying for a longer term visa, appealing a decision regarding their visa or making arrangements to leave Australia. Bridging visas A and B are both temporary visas that allow people to live in Australia lawfully after their substantive visa has expired². They are administered to people seeking more permanent living options in Australia, usually enforced with the conditions of their previous visa³.

In this submission we call upon the COVID-19 Committee to recommend that the Australian Government take action to provide relief for bridging visa holders who have experienced poverty and

¹ The Rights Resource Network is a volunteer-run network that received funding from the Law Foundation of South Australia in 2020 and 2021. It exists to share information and create opportunities for collaboration and joint advocacy among academics, community organisations and individuals who are committed to protecting the human rights of South Australians. The Network is governed by a volunteer Advisory Group with broad range of expertise and experiences. For more information visit <https://www.rightsnetworksa.com/>

² *Migration Act 1958* (Cth), ss 72, 73.

³ *Migration Act Regulations 1994* (Cth), reg. 2.21.



distress due to the COVID-19 pandemic and to address the confusion behind compassionate and compelling grounds to grant travel exemptions.

Summary of Recommendations

Recommendation 1: Extend Job Keeper and Job Seeker social security payments to all bridging visa holders, adopting a policy framework regarding COVID-19 payment. Under section 6 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*, an *eligible employee* is defined as someone who was an Australian resident pursuant to section 7 of the *Social Security Act 1991* (Cth). This definition should be amended to encompass any person living and paying taxes in Australia. We also suggest prioritising the resolution of permanent residency applications by bridging visa holders so that they can access Centrelink and other benefits offered to permanent residents of Australia.

Recommendation 2: Clarify the criteria applied by the Minister when addressing applications to permit travel for compassionate grounds for persons on bridging visa. This is crucial to protect the rights and wellbeing of bridging visa holders as COVID-19 will have a long-term impact on the way people travel, including bridging visa holders. There is currently confusion regarding what circumstances compassionate grounds are accepted and refused, leading to perceived and substantive unfairness and potential discrimination. Clear criteria should be included within sections 8, 9 and 10 of the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022*, which currently provide the authority for granting travel exemptions. In addition, consideration should be given to temporarily waiving the need for Bridging Visa A holders to apply for a Bridging Visa B in order to travel, to align this class of visa holders with other classes of temporary visa holders who are currently offered automatic exemptions to travel.

These recommendations are necessary to ensure that Australia is adhering to its international human rights obligations in this area including Article 9 of the *International Covenant on Economic Social and Cultural Rights* and Article 12 (2) and (4) of the *International Covenant on Civil and Political Rights* (ICCPR). Further information about each of these recommendations is set out below.

Recommendation 1: Giving bridging visa holders access to COVID-19 benefits

Currently, only Australian citizens, permanent residents and specific classes of visa holders are able to access COVID-19 federal income supports including Jobseeker and Job Keeper. Bridging visa holders are excluded from this cohort because section 7 of the *Social Security Act 1991* (Cth) defines an ‘Australian Resident’ as someone who is a citizen, holds a permanent visa or is a protected SVC holder. In April 2020, when Job Keeper and Job Seeker were introduced, the Prime Minister stated that there would be consideration of migrants and temporary visa holders, but ‘the short answer was no’⁴ and that it was “time to go home”⁵, revealing a patent disregard to the very real challenges faced by temporary visa holders who have contributed to the Australian economy and the Australian society.

⁴ https://www.theguardian.com/australia-news/2020/apr/01/left-with-nothing-australias-migrant-workforce-face-destitution-without-coronavirus-safety-net?CMP=Share_iOSApp_Other.

⁵ <https://www.abc.net.au/news/2020-04-03/coronavirus-pm-tells-international-students-time-to-go-to-home/12119568>.

Rights Resource Network SA

connecting change creators + law makers

rightsnetworksa.com
rightsnetworksa@gmail.com



The Australian Government's approach can be contrasted with the Canadian experience. The Canada Emergency Response Benefit (CERB) was available to any person over the age of 15 who resided in Canada. This payment was \$2000 CAD over four weeks and was not restricted to solely Canadian citizens or permanent residents, but, to people who lived and had a home in Canada⁶. Furthermore, Canada continues to support its working residents through other monetary packages, including the Canada Worker Lockdown Benefit and Canada Recovery Caregiving Benefit.

Extending Job Keeper and Job Seeker to bridging visa holders for the duration of the COVID-19 pandemic would recognise the contribution of these individuals to the Australian economy and acknowledge their efforts in complying with other COVID-19 measures despite facing considerable health, employment, housing and other challenges. This could be achieved by altering the definition of an *eligible employee* and *employer* under the 'Coronavirus Economic Response Package (Payments and Benefits) Rules 2020' to encompass any person with working rights in Australia.

The financial hardship during COVID-19 experienced by bridging visa holders has been particularly acute. Many have lost their jobs as a result of COVID, and many more in casual work may be overlooked by employers, due to their residency status⁷. This is a form of discrimination against temporary visa holders, and fails to comply with Australia's international human rights obligations under Article 9 of the ICESCR.

The Australian Government's failure to support bridging visa holders during the COVID-19 pandemic has added stressed to already oversubscribed charities, such as the Asylum Seeker Resource Centre (ASRC). Chief Executive of the ASRC, Kon Karapandagiotidis, explained how difficult it had been to help refugee families during the peak of the pandemic⁸ and have caused some bridging visa holders to a state of destitute in which they are squatting and relying on charities to provide them food⁹. In order to support bridging visa holders, we suggest that the COVID-19 Committee implement measures that are adequately adapted to respond to the financial hardship caused by the pandemic. These include:

- Extending Job Keeper and Job Seeker to bridging visa holders who been affected by COVID-19, such as shortened working hours or job loss.
- Prioritising bridging visa holder applications for permanent residency so that they have access to Centrelink and are able to support themselves.

⁶ <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-5-international-residency/folio-1-residency/income-tax-folio-s5-f1-c1-determining-individual-s-residence-status.html>.

⁷ Ziersch, A., Walsh, M., Due, C. and Reilly, A., 2021. Temporary refugee and migration visas in Australia: an occupational health and safety hazard. *International Journal of Health Services*, 51(4), pp.531-544; <https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid307213.pdf>.

⁸ <https://www.sbs.com.au/news/we-re-at-breaking-point-australian-charities-welcome-revised-jobkeeper-threshold-as-demand-for-help-surges/c846e182-4113-42af-9602-34f2d3c82c0d>.

⁹ <https://www.abc.net.au/news/2021-08-29/no-end-in-sight-thousands-living-in-visa-limbo/100400418>
<https://www.theguardian.com/australia-news/2021/dec/12/i-was-squatting-why-asylum-seekers-so-often-struggle-to-find-secure-housing>.



Recommendation 2: Addressing compassionate grounds for Bridging Visa holders and enforcing a clear policy

Bridging visas A and B are both temporary visas that allow people to live in Australia lawfully after their substantive visa has expired¹⁰. They are administered to people seeking more permanent living options in Australia, usually enforced with the conditions of their previous visa¹¹. The difference between the two visas is that a Bridging Visa A does not allow a person to return to Australia if they leave the country, while someone on a Bridging Visa B is allowed to depart and return to Australia while they await processing of their substantive visa.

From the onset of COVID-19, the policy for Bridging Visa A holders has not changed, which has caused great distress to people who have not seen their families in years and there is additional anxiety attached to the cancellation of visas if they leave the country. Compassionate grounds are not directly addressed in legislation, however the Outward Travel Restrictions Operation Directive attempts to describe the circumstances under which compassionate and compelling grounds may warrant a travel exemption being granted. It also states that s 477 of the *Biosecurity Act 2015* (Cth) authorises the Health Minister to determine emergency requirements during the pandemic and provides the Minister with a broad discretion to decide travel restrictions.

The situation of Bridging Visa A holders can be contrasted with other temporary visa holders who have been offered automatic exemptions to facilitate their travel from and return to Australia, such as holders of the Business Innovation and Investment visa. In recent developments, fully vaccinated Bridging Visa B holders are also no longer required to apply for a travel exemption before travel. However, this still leaves Bridging Visa A holders who must leave the country urgently at a loss.

People awaiting their permanent residency status on Bridging Visa A are required to apply for a Bridging Visa B and have it granted before departure, as they cannot leave Australia until their case is heard by the Administrative Appeals Tribunal. This must occur at least 30 days before travel, which can pose an unreasonable time delay if they are required to travel to attend a funeral or support a family member in response to the pandemic. We suggest that consideration be given to temporarily waiving this process for Bridging Visa A holders who need to travel urgently, including, for example, to attend a funeral, support a sick relative or assist an unaccompanied minor.

Ash Fadian's case is a recent case in which a bridging visa holder has been denied an exemption to visit her brother-in-law's funeral in the UK, even though she has not left the country in nearly 4 years¹². It is unclear as to why this was not an acceptable basis for seeking compassionate grounds. It has left the community wondering what types of scenarios will meet the threshold and caused distressed for those already experiencing hardship and trauma.

The incongruity of the approach taken to some temporary visa holders and not others undermines the stated rationale of the COVID-19 travel restrictions. For example, Home Affairs Minister, Karen Andrews has said that the restrictions for bridging visa holders are in place to "support public health

¹⁰ *Migration Act 1958* (Cth), ss 72, 73.

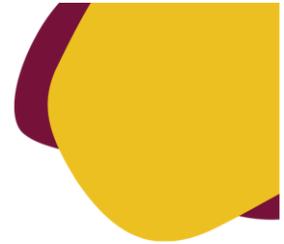
¹¹ *Migration Act Regulations 1994* (Cth), reg. 2.21.

¹² <https://www.theguardian.com/australia-news/2022/jan/24/im-beyond-devastated-sydney-woman-on-bridging-visa-denied-exemption-to-travel-to-uk-funeral>

Rights Resource Network SA

connecting change creators + law makers

rightsnetworksa.com
rightsnetworksa@gmail.com



measures” and to ensure that jobs for Australians are not displaced. However, someone granted an automatic exemption from travel restrictions has the same chance of contracting the virus as someone who must apply for compassionate grounds, giving rise to concerns of discriminatory treatment towards Bridging Visa A holders. Why should a person in desperate need of visiting their family overseas be denied the right to travel, when a businessperson is able to travel freely to another country and return to Australia? We should aim to align the circumstances of Bridging Visa A holders with other temporary visa holders because every person, regardless of immigration status, poses an equal risk of spreading COVID-19 to others. If anything, the pandemic had acted as a strong deterrent against discretionary travel towards bridging visa applicants, suggesting that only those who have a compelling reason to travel would do so.

In order to address these issues, we recommend that the Government develop:

- A clear policy regarding compassionate grounds and what can be approved or refused. This can be a matter of including a definition or set of criteria in the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022* and making this criteria accessible to everyone on the Travel Restrictions and Exemptions page on the Department of Home Affairs website.
- Alternatively, for the duration of the COVID-19 pandemic, people on Bridging Visa A should be temporarily relieved of having to apply for a Bridging Visa B when leaving for compassionate reasons, provided that they return to Australia within a three-month timeframe and ensure that the correct vaccination and isolation procedures are met by each person.

The Rights Resource Network SA looks forward to continuing to help facilitate further community consultation in this area. We look forward to speaking to the Committee further about this submission and can be contacted on 0401132544 as well as via email sarah.moulds@uinsa.edu.au.

Yours sincerely

Dr Sarah Moulds, Director, Rights Resource Network SA, Senior Lecturer in Law, University of South Australia

Fariza Ali, Rights Resource Network SA Volunteer and Law Student